

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>LADYBUG FAMILY RESTAURANT, INC.,</b>	)	<b>3:12CV670</b>
<b>DIONNE NICHELLE GARRIS, a/k/a DIONNE</b>	)	
<b>NICHELLE LINDSEY,</b>	)	
<b>RETHA KENDALL LINDSAY, a/k/a RETHA</b>	)	
<b>KENDALL LINDSEY,</b>	)	
<b>CHARMAINE SIMONE LINDSAY, a/k/a</b>	)	
<b>CHARMAIN SIMONE LINDSEY, and</b>	)	
<b>DEMETRIS KENDALL</b>	)	
	)	
<b>Defendants</b>	)	
	)	
<hr/>		

**COMPLAINT**

The United States of America, by and through its undersigned attorneys, brings this civil action to recover damages, penalties, costs, and any other available relief pursuant to the False Claims Act, 31 U.S.C. § 3729(a) *et seq.*, and under common law and equity, alleging as follows:

**I. THE PARTIES**

1. Plaintiff is the United States of America (“Plaintiff” or “United States”), acting on behalf of itself and the United States Department of Agriculture, an agency of the United States.

2. Ladybug Family Restaurant, Inc. is a corporation organized and existing under the laws of the State of North Carolina and operates two restaurants by the name of the Ladybug Family

Restaurant. One of those restaurants is located at 1208 East Caswell Street, Wadesboro, N.C. 28170 and the other is located at 1229 South Main Street, Laurinburg, N.C. 28352. The principal place of business and registered address for Ladybug Family Restaurant, Inc. is 1208 East Caswell Street, Wadesboro, N.C. 28170.

3. Dionne Nichelle Garris, sometimes known as Dionne Nichelle Lindsey, is a resident of Morven, North Carolina and upon information and belief, is employed by or works for one or both of the Ladybug Family Restaurants in Wadesboro, and Laurinburg, N.C., and/or is employed by or works for Ladybug Family Restaurant, Inc.

4. Retha Kendall Lindsay, also sometimes known as Retha Kendall Lindsey, is a resident of Lilesville, North Carolina, and upon information and belief, is employed by or works for one or both of the two Ladybug Family Restaurants in Wadesboro, and Laurinburg, N.C., and/or is employed by or works for Ladybug Family Restaurant, Inc.

5. Charmaine Simone Lindsay, also sometimes known as Charmaine Simone Lindsey, is a resident of Lilesville, North Carolina, and upon information and belief, is employed by or works for one or both of the Ladybug Family Restaurants in Wadesboro, and Laurinburg, N.C., and/or is employed by or works for Ladybug Family Restaurant, Inc.

6. Demetris Kendall is a resident of Lilesville, NC, and upon information and belief, is employed by or works for one or both of the Ladybug Family Restaurants in Wadesboro, and Laurinburg, N.C., and/or is employed by or works for Ladybug Family Restaurant, Inc.

## **II. JURISDICTION AND VENUE**

7. The Court has jurisdiction over this matter pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.*, 28 U.S.C. § 1331 (federal statutes), 28 U.S.C. § 1345 (United States as Plaintiff),

and its general equitable jurisdiction. Venue is proper in the Western District of North Carolina pursuant to 28 U.S.C. § 1391(b), and 31 U.S.C. § 3732(a) because the events and transactions complained of occurred within, and/or the Defendants reside and have their principal place of business within, the Western District of North Carolina.

### **III. FACTS UNDERLYING ALL CLAIMS**

8. The United States Department of Agriculture, Food and Nutrition Service, issues Supplemental Nutrition Assistance Program (SNAP) benefits to qualified low income or no income individuals to allow them to purchase qualified food and nutrition items. Formerly known as food stamps, these benefits are now issued in the form of an Electronic Benefit Transaction (EBT) card, which is similar to a debit card, that can be swiped in a merchant's credit card machine with the purchase amount deducted from the cardholder's benefit credits. SNAP EBT cards are issued in the name of the qualified recipient, with that person's name printed on the EBT card along with an account number unique to that cardholder. When a SNAP EBT cardholder purchases goods with the card, Federal funds are transferred through the State of North Carolina into the vendor's bank account for the value of the goods purchased. Monies paid through the SNAP EBT cards are ultimately paid for by the United States.

9. From on or about August 4, 2011, up until at least June 18, 2012, Defendants Lady Bug Family Restaurant, Inc., Retha Kendall Lindsay, Dionne Nichelle Garris, Charmaine Simone Lindsay and Demetris Kendall engaged in a conspiracy to defraud the United States by using individual SNAP EBT cards issued to persons other than these Defendants, to purchase meat, food, and other items at grocery stores for use in one or more restaurants owned and operated by Ladybug Family Restaurant, Inc.

10. From on or about August 4, 2011, up until at least June 18, 2012, Defendants Ladybug Family Restaurant, Inc, Retha Kendall Lindsay, Dionne Nichelle Garris, Charmaine Simone Lindsay and Demetris Kendall knowingly used individual SNAP EBT cards issued to persons other than these Defendants, to purchase meat, food, and other items at IGA grocery stores for use by themselves or in one or more restaurants owned and operated by Ladybug Family Restaurant, Inc.

11. On the following dates, Retha Kendall Lindsay used SNAP EBT cards issued to persons other than herself<sup>1</sup> to purchase meat and/or other items at the IGA supermarket located at 805 Camden Road, Wadesboro, NC:

Date	Amount Charged
10/29/2011	\$ 61.23
11/05/2011	\$ 193.27
11/07/2011	\$ 87.65
11/11/2011	\$ 15.24
12/09/2011	\$ 100.69
<b>Total<sup>2</sup></b>	<b>\$ 458.08</b>

12. On the following dates, Dionne Nichelle Garris used SNAP EBT cards issued to persons other than herself to purchase meat and/or other items at the IGA supermarket located at 805 Camden Road, Wadesboro, NC:

Date	Amount Charged
08/06/11	\$ 204.35

---

<sup>1</sup>To protect the privacy of the persons whose SNAP EBT cards were used, the names and account numbers on those cards will not be pleaded in this complaint. That information will be provided in discovery under an appropriate protective order.

<sup>2</sup>The totals alleged here and at the bottom of other columns of dollar amounts alleged in this complaint are simply the sums of the numbers in such columns and are not intended to limit the full amount of damages that may be determined during discovery or the trial of this case.

08/12/11	\$ 161.81
08/13/11	\$ 126.20
08/16/11	\$ 24.12
08/16/11	\$ 110.42
08/17/11	\$ 194.69
08/31/11	\$ 29.58
09/09/11	\$ 112.81
09/15/11	\$ 249.65
09/17/11	\$ 95.01
09/20/11	\$ 67.43
09/21/11	\$ 34.03
10/07/11	\$ 257.47
10/08/11	\$ 165.43
10/11/11	\$ 153.84
10/13/11	\$ 158.43
10/26/11	\$ 140.83
11/04/11	\$ 124.29
11/08/11	\$ 161.52
11/10/11	\$ 124.09
11/16/11	\$ 157.87
12/06/11	\$ 211.84
12/06/11	\$ 129.01
12/09/11	\$ 200.00
12/09/11	\$ 78.17
03/06/12	\$ 221.47
03/16/12	\$ 130.90
03/20/12	\$ 90.12
03/21/12	\$ 110.66
04/20/12	\$ 68.87

**Total**                    **\$ 4,094.91**

13. On October 18, 2011 Charmaine Simone Lindsay used a SNAP EBT card issued to a person other than herself to purchase meat and/or other items at the IGA supermarket located at 805 Camden Road, Wadesboro, NC in the amount of \$128.13.

14. Upon information and belief, on February 12, 2012, Demetris Kendall used a SNAP EBT card issued to a person other than herself to purchase meat and/or other items at the IGA supermarket located at 280 Highway 1 South, Cheraw, S.C. 29520 in the amount of **\$148.07**.

15. Upon information and belief, one or more of the Defendants in this case, or agents acting on their behalf, used SNAP EBT cards issued to persons other than themselves to purchase meat and/or other items at the IGA supermarket located at 1211 Pearl Street, Pageland, SC on the following dates:

Date	Amount Charged
04/13/12	\$ 175.71
04/16/12	\$ 171.27
05/05/12	\$ 304.33
05/11/12	\$ 307.06
05/15/12	\$ 72.84
05/21/12	\$ 504.80
06/18/12	\$ 266.57
<b>Total</b>	<b>\$ 1,802.58</b>

16. Upon information and belief, one or more of the Defendants in this case, or agents acting on their behalf, used SNAP EBT cards issued to persons other than themselves to purchase meat and/or other items at the IGA supermarket located at 805 Camden Road, Wadesboro, NC on the following dates:

Date	Amount Charged
11/18/11	\$ 127.13
11/19/11	\$ 37.08
11/22/11	\$ 124.34
11/22/11	\$ 193.29
01/05/12	\$ 201.26
<b>Total</b>	<b>\$ 683.10</b>

17. Upon information and belief, one or more of the Defendants used the same SNAP EBT cards involved in the transactions specified above on other dates and for additional purchases as will be determined in discovery and proven at the trial of this matter.

18. The individual Defendants' use of the SNAP EBT cards for the transactions alleged in this complaint was done with full knowledge by the Defendants that their names were not on the SNAP EBT cards, that the SNAP EBT cards were issued in the name of and for the benefit of persons other than the Defendants, that the Defendants were not lawfully permitted or authorized to use the SNAP EBT cards for these purchases, and with the knowledge and intent that false and fraudulent claims would thereby be made to and paid by the United States.

19. Upon information and belief, the food and other items purchased in the transactions alleged in this complaint were used by the individual Defendants or at restaurants owned or operated by Ladybug Family Restaurant, Inc. For each of the transactions where the purchased items were used at or by restaurants owned by Ladybug Family Restaurants, Inc., the individual Defendants were acting within the course and scope of their employment by or agency of one or both of those restaurants and/or Ladybug Family Restaurants, Inc., and did so for the benefit of one or more of those entities.

20. The Ladybug Family Restaurant, Inc. and its management knew or reasonably should have known that the individual Defendants were unlawfully purchasing food and other items for its restaurants with SNAP EBT cards.

21. The Ladybug Family Restaurant, Inc. directly benefited from the unlawful and wrongful acts of the other Defendants alleged in this complaint and is both directly liable to the Plaintiff and liable also through the doctrine of respondeat superior because of the acts of the individual Defendants who were its agents and employees.

22. Upon information and belief, the Defendants obtained the SNAP EBT cards at less than their face value and by their redemption, obtained valuable benefits to which they were not entitled, and otherwise unjustly enriched themselves.

23. The Defendants' use of the SNAP EBT cards for the transactions identified in this complaint resulted in false and fraudulent claims being made to and paid by the United States with regard to such transactions.

**COUNT I**  
**FALSE CLAIMS ACT - 31 U.S.C. § 3729(a)(1)(A)**

24. The Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs as if set forth fully herein.

25. On the dates set forth in the preceding paragraphs of this complaint, by using SNAP EBT cards issued to persons other than themselves to obtain meat, food, and other items the Defendants knowingly presented, or caused to be presented, false and fraudulent claims for payment or approval in violation of 31 U.S.C. § 3729(a)(1)(A), resulting in damages to the United States in at least the amounts alleged in this complaint and otherwise in an amount to be proven at trial.

**COUNT II**  
**FALSE CLAIMS ACT - 31 U.S.C. § 3729(a)(1)(B)**

26. The Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs as if set forth fully herein.

27. On the dates set forth in the preceding paragraphs of this complaint, by using SNAP EBT cards issued to persons other than themselves to obtain meat, food, and other items the Defendants knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims in violation of 31 U.S.C. § 3729(a)(1)(B), resulting in damages to the United States in at least the amounts alleged in this complaint and otherwise in an amount to be proven at trial.



**COUNT III**  
**FALSE CLAIMS ACT - 31 U.S.C. § 3729(a)(1)(C)**

28. The Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs as if set forth fully herein.

29. On or about the dates set forth in the preceding paragraphs of this complaint, the Defendants engaged in a conspiracy to violate 31 U.S.C. § 3729(a)(1)(A) and (B) in violation of 31 U.S.C. § 3729(a)(1)(C), resulting in damages to the United States in at least the amounts alleged in this complaint and otherwise in an amount to be proven at trial.

**COUNT IV**  
**UNJUST ENRICHMENT**

30. The Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs as if set forth fully herein.

31. The Defendants' use of SNAP EBT cards as alleged in this complaint resulted in valuable benefits being unlawfully transferred to and for the benefit of the Defendants, and by which they were unjustly enriched. In justice and in equity, the reasonable value of those benefits must be returned to the United States. The value of those benefits are at least the amounts alleged in this complaint and otherwise in an amount to be proven at trial.

**COUNT V**  
**DAMAGES, PENALTIES, AND COSTS**

32. The Plaintiff re-alleges and incorporates by reference the allegations in the preceding paragraphs as if set forth fully herein

33. Pursuant to 31 U.S.C. § 3729(a)(1) and (3), the United States is entitled to claim and

hereby demands three times the amount of damages sustained by the United States as a result of the Defendants' violations of 31 U.S.C. § 3729(a) as alleged herein, plus civil penalties of not less than \$5,500 or more than \$11,000 or as otherwise permitted by law, for each violation, plus the costs of this civil action.

WHEREFORE, the United States Plaintiff prays unto the Court that:

Judgment be entered against all Defendants, jointly and severally, for damages sustained by the United States, treble damages under the False Claims Act, civil penalties under the False Claims Act, damages representing the reasonable amount of unjust enrichment of the Defendants due to their conduct alleged in this complaint, post-judgment interest, the costs of this action, and for such other relief as may be permitted by law or in equity.

This 10<sup>th</sup> day of October, 2012.

**ANNE M. TOMPKINS**  
United States Attorney  
Western District of North Carolina

**s/ Jonathan H. Ferry**

---

**Jonathan H. Ferry**  
Assistant United States Attorney  
Western District of North Carolina  
N.C. Bar No. 39117  
227 West Trade Street, Suite 1650  
Charlotte, NC 28202  
Tel. – 704-344-6222  
Fax. – 704-227-0248  
Email: [jonathan.ferry@usdoj.gov](mailto:jonathan.ferry@usdoj.gov)

**s/ Paul B. Taylor**

---

**Paul B. Taylor**  
Assistant United States Attorney  
Western District of North Carolina  
Chief, Civil Division  
N.C. Bar No. 10067  
U.S. Courthouse, Room 233  
100 Otis Street  
Asheville, NC 28801-2611  
Tel. – 828-271-4661  
Fax. – 828-271-4670  
Email: [paul.taylor@usdoj.gov](mailto:paul.taylor@usdoj.gov)